

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6086 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHUPENDAKUMAR @ BHUPATBHAI SHAMJIBHAI RATHOD

Versus

GURUPRASAD MAHAPATRA DISTRICT MAGISTRATE

Appearance:

MR YATIN SONI for Petitioner

MR SJ DAVE, AGP for Respondent Nos. 1,2 and 4

MR SUNIL C PATEL for Respondent No. 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 12/09/97

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 25/5/1997 passed by the respondent no. 1 being the District Magistrate u/s. 3 (2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential

Commodities Act, 1980 (for short 'PBM Act').

2. The grounds of detention have been filed at Annexure-B in this petition and they inter-alia indicate that the essential articles are being distributed through the fair price shops under the Public Distribution Scheme and grains and pulses are essential articles. The petitioner running a Government recognised fair price shop is bound to follow the provisions of the Essential Article (Licencing, Control and Stock Declaration) Order, 1981 in respect of wheat, rice, pulses, palmolive oil, kerosene and other essential articles. The petitioner has been distributing stock to the card holders and also to the organisers of mid-day meals scheme. He has entered into an agreement dated 24/4/1991 with the District Supply Officer, Rajkot under which he is responsible for distribution of essential articles and to maintain its true and correct accounts. It has been alleged that upon receipt of information from the District Supply Officer, Rajkot, the truck No. GJ-3-V-7179 leaving Bhavnagar in the early morning of 26/3/1997 loaded through the petitioner with the stock of wheat and rice meant for public distribution was searched by the Supply Inspectors of District Supply Officer, Bhavnagar at Shihor on 26/3/1997 and it was found that it contained 150 bags of rice, 300 Kgs. of Mung Dal and 50 Kgs. of pulses costing about Rs.1,27,000/-. This stock and the truck valued Rs.6,75,000/- came to be seized and the samples of the said foodgrains disclosed that they were the same as per the food-grains lying in the Shihor godown. Entries for the period from November 1996 to March 1997 in respect of wheat, rice and oil meant for the aforesaid public distribution scheme and mid-day meals scheme were not made. From the statement given by the petitioner before the Supply Inspector, Rajkot on 21/4/1997 it appeared that the stock of rice had been unauthorisedly disposed of by the petitioner for having financial gain. It appeared from the statement of the truck driver recorded on 26/3/1997 that the petitioner was travelling in the truck, but he had run away in the presence of the Supply Inspector on the excuse of going for attending call of nature. It appeared from the seized stock that the stock of rice belonged to the Corporation. Statement of the transport owner was also recorded and the same also would reflect the offending activity of the petitioner, as particularised in the grounds of detention. The offending activities of the petitioner have also been particularised in the grounds of detention at length. Reference has also been made to

the entries made in the stock register of the relevant articles. It has also been alleged that the petitioner committed contravention of clauses 16 and 23 of the Essential Articles (Licencing, Control and Stock Declaration) Order, 1981 and condition nos. 7 and 4(1) of the licence. With regard to kerosene also, the petitioner's activity has been set out from the material placed before the detaining authority in the grounds of detention. It has, therefore, been alleged that the petitioner has committed serious irregularities in distribution of essential articles meant for public distribution to the people belonging to the weaker section of the society and that the petitioner has been in habit of indulging in such serious type of irregularities which cannot be prevented unless the petitioner was preventively detained under the aforesaid provisions of the PBM Act.

3. The impugned order and continued detention under the same has been challenged on number of grounds set out in the petition. One of the grounds which has been canvassed relates to the non-supply of documents as particularised in ground no. 4 (o). The said ground reads as under :-

"The petitioner respectfully states that the petitioner has not been supplied with the material documents upon which the detaining authority has placed reliance for passing the order of detention against the petitioner. It is submitted that the detaining authority has placed reliance on the conditions of licence for coming to the conclusion that the petitioner has committed a breach of certain conditions of the licence. However, the detaining authority has not supplied the entire copy of the licence, but has supplied incomplete copy of the licence. Thus, the documents upon which the detaining authority has placed reliance has not been supplied to the petitioner and therefore, there is a breach of Art. 22(5) of the Constitution."

4. The aforesaid ground of challenge against the impugned order of detention and the continued detention thereunder has not been dealt with in the affidavit in reply filed on behalf of respondent no.1. Mr. S.J. Dave, Ld. A.G.P. who appears for the said respondent, therefore, verified the file and he fairly submitted that the copy of the document which has been supplied to the petitioner is incomplete. It may be noted that the

detaining authority has placed reliance upon the licence which would disclose the conditions for holding the licence. It has, therefore, been submitted that there is non-communication of the grounds of detention and, therefore, non-compliance of Article 22(5) of the Constitution of India.

5. In the background of the aforesaid facts, it does appear that mandate of Article 22(5) of the Constitution of India cannot be said to have been complied with. That would lead to the conclusion that the petitioner has been deprived of his right to make effective representation against the impugned order of detention. This ground alone would be sufficient to vitiate the impugned order of detention. This conclusion would stand fortified by the decisions in the case of Budhabhai Somabhai Parmar v. District Magistrate, Kheda reported in 30 (1) GLR 325 and Kiritkumar v. Union of India reported in AIR 1981 SC 1621.

6. In view of what is stated above, the continued detention of the petitioner under the impugned order of detention is quashed and set aside. It is directed that the petitioner-detenu- Bhupendrakumar alias Bhupatbhai Shamjibhai Rathod shall be set at liberty forthwith, if he is not required in any other case. Rule made absolute accordingly.

* * * * *